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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,707	07/03/2001	Thomas Zickell	NEI-010XX	2439
7590	05/11/2004		EXAMINER	
Bourque & Associates, P.A. Suite 303 835 Hanover Street Manchester, NH 03104				AUGHENBAUGH, WALTER
		ART UNIT	PAPER NUMBER	1772

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/898,707	ZICKELL, THOMAS
	<b>Examiner</b>	<b>Art Unit</b>
	Walter B Aughenbaugh	1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 24 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a)  The period for reply expires 6 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: *See continuation sheet.*

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: 10.

Claim(s) rejected: 1-15.

Claim(s) withdrawn from consideration: 16-20.

8.  The drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: \_\_\_\_\_

## **SUPPLEMENTAL ADVISORY ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The amendments made in claims 1-3 and 13-15 in the After Final Amendment filed March 24, 2004 have not been entered due to the fact that the amendments raise new issues that would require further consideration and/or search. The “disposed about said first end region” recitation of claim 2 and the “low enough such that said asphalt composition is fire resistan[t]” recitation of claims 13 and 15 require further consideration and/or search.

2. As a result of the May 3, 2004 telephonic interview (see Interview Summary form), Examiner withdraws the statement made in the Advisory Action mailed April 14, 2004 that “the “an upper surface of” recitation added to claims 1 and 14 requires further consideration and/or search”.

### ***ANSWERS TO APPLICANT'S ARGUMENTS***

3. Applicant's arguments presented on pages 10-11 of the After Final Amdt. regarding the 35 U.S.C. 112 rejection of claim 1 made of record in paragraph 9 of Paper 8 have been fully considered but are not persuasive. Claim 1 does recite “two adjacent covering materials” in the 15<sup>th</sup>-16<sup>th</sup> lines of the claim, and therefore, there is antecedent basis for the plural form of “decorative surface area” (i.e. “decorative surface areas”), but the phrase “decorative surface areas” does not appear prior to the “said decorative surface areas” recitation (while the phrase “a decorative surface area” does appear prior to the “said decorative surface areas” recitation). Replacement of “said” with --the-- in the phrase “said decorative surface areas” would overcome the rejection of claim 1 under 35 U.S.C. 112.

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4. Applicant's arguments presented on pages 11-15 of the After Final Amdt. regarding the 35 U.S.C. 103 rejection of claims 1 and 14 over Simpson et al. in view of McGroarty et al. and in further view of Kennepohl et al. made of record in paragraph 10 of Paper 8 have been fully considered but are not persuasive. Applicant argues that "the aluminum foil sheet 18" is "adhered to the upper surface of ionomer resin adhesive 22 [and not to the asphalt composition 24]" in the 1<sup>st</sup>-3<sup>rd</sup> and 15<sup>th</sup>-17<sup>th</sup> lines of page 13 of the After Final Amdt., but the aluminum foil sheet 18 is "adhered to" the asphalt composition 24 via adhesive 22 and polyethylene sheet 20 (see Fig. 1).

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 6:00pm and on alternate Fridays from 9:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

05/03/04

WBA

*Harold Pyon*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1992

5/3/04